

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

Northern Illinois Gas Company	)	
d/b/a Nicor Gas Company	)	
	)	Docket No. 08-0363
Proposed general increase in natural gas rates.	)	
	)	

**Summary of Position of the People of the State of Illinois**

Pursuant to the July 18, 2008 Case Management Order, the People of the State of Illinois file this Summary of Position memorandum. As discussed below, the People have presented the testimony of two witnesses in this case, both co-sponsored with the Citizens Utility Board ("CUB"): David J. Effron (AG/CUB Exhibits 1.0 – 1.1 and AG/CUB Exhibits 4.0 – 4.2) and Scott J. Rubin (AG/CUB Exhibits 2.0 – 2.15, AG/CUB Exhibits 3.0 – 3.07, and AG/CUB Exhibits 5.0 – 5.05). This memorandum briefly summarizes the People's legal and factual positions on 1) various revenue requirement issues, including rate base and operating income matters; 2) Nicor's proposed new riders UEA, CUA, VBA, QIP and EEP; and 3) Nicor's proposed rate design. Complete discussions of the various issues cited below appear in the People's Initial and Reply briefs, filed on December 17, 2008 and January 9, 2009 respectively.

**II. Overall Revenue Requirement and Revenue Deficiency**

The Company calculates that it has a revenue requirement of \$591,719,000, which under current rates results in a revenue deficiency of \$141,552,000. The People believe, for the reasons stated herein, this grossly exaggerates the Company's revenue deficiency. Upon final review of the record evidence in this case, the People calculate an overall revenue deficiency of \$42,900,000 for the Company. This is based upon the People's calculation of an appropriate rate base of \$1,303,384,000; a rate of return of 7.24%; an operating income requirement of \$94,275,000; an adjusted operating income of \$69,891,000; and an income deficiency of \$25,384,000. The People used a gross revenue conversion factor of 1.6900 in this calculation.

**IV. Rate Base**

**A. Overview**

Based upon the testimony of AG/CUB witness David Effron, record evidence and commission practice, the People continue to propose a series of adjustments to Nicor's test year rate base including adjustments to the balance of gas in storage, the pension asset, and accumulated reserves for depreciation and amortization (the cost of removal component). Based upon these adjustments, an adjustment to the Company's Accumulated Deferred Income Taxes will also be necessary. The People continue to support as well certain adjustments proposed by ICC Staff to net plant in service, accumulated depreciation, accumulated deferred income taxes, and customer advances for construction. These adjustments ultimately reduce the Company's test year rate base by \$220,012,000 to a total of \$1,302,145,000. The complete series of

adjustments and calculations is shown on Attachment A to this Summary of Position, which was also provided with the People's Initial Brief.

### **C. Contested Issues**

#### **1. Cash Working Capital**

The People support the recommendations of ICC Staff witness Daniel Kahle that the Company's Cash Working Capital be adjusted for the reasons described in his testimony, ICC Staff Ex. 14.0 at pages 5-11. AG In. Br. at 9. The Commission should reduce Nicor's cash working capital requirement by \$25,055,000. ICC Staff Ex. 14.0, Schedule 14.3.

#### **2. Gas in Storage**

The Commission should reduce Nicor's projections of gas in storage inventory included in test year rate base should by \$29,228,000 so that the test year balance reflects the most recent actual data available, and accounts for the impact of Nicor's "Last In, First Out" ("LIFO") policy. AG In. Br. at 9-10; AG Reply Br. at 4-6; AG/CUB Ex. 4.1, Schedule B. AG/CUB witness David Effron calculated an average balance of gas in storage of \$66,417,000, which includes adjusting the gas in storage balance for related accounts payable.

#### **3. Pension Asset**

Against the Commission's express directive that net pension asset be eliminated from rate base, Nicor proposes to include a pension asset consisting of an offset to its accrued liability for post-retirement benefits other than pensions, plus smaller retirement accruals, against prepaid pensions<sup>1</sup>. AG In. Br. at 10-12; AG Reply Br. at 6-7. In both of the Company's last two delivery service rate cases, ICC Docket Nos. 95-0219 and 04-0779, the Commission rejected the inclusion of the then-forecast net pension asset in Nicor Gas' proposed net rate base. ICC Docket No. 04-0779, *Northern Illinois Gas Company d/b/a Nicor Gas Company, Proposed general increase in natural gas rates*, Final Order, September 20, 2005, at 22 ("ICC Docket No. 04-0779 Final Order"). In line with those conclusions, the Commission should again reject Nicor's attempt to include its pension asset, as well as the related balance of accumulated deferred income taxes, by reducing the Company's rate base by \$142,044,000. AG/CUB Ex. 4.1, Schedule B.

#### **4. Gross Plant**

The People support the recommended adjustments proposed by ICC Staff regarding 2009 proposed building projects and estimated plant additions for 2008 and 2009. ICC Staff witness Mark Maple recommends that the Commission reduce Nicor Gas' plant in service to exclude two building projects where the Company has failed to explain how any of the current facilities are inadequate or how the new facilities will be less expensive. ICC Staff Ex. 23.0 at 2-3. The Commission should reduce Nicor's gross plant accordingly by \$8,710,000. AG In. Br. at 12; Attachment A.

The People also support the recommendation of ICC Staff witness Michael Ostrander that the Company's estimated plant additions for 2008 and 2009 be adjusted to reduce utility plant and related accumulated depreciation, accumulated deferred income taxes, and depreciation

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<sup>1</sup> The Commission also concluded that the rate base deduction related to postretirement benefits other than pensions (or "OPEB") should not be eliminated, as the Company continued to control the ratepayer-supplied OPEB funds. ICC Docket 04-0779, Final Order at 22-23.

expense for 2008 and 2009 estimated plant additions that are overstated based on the Company's historical pattern of overestimating its projected plant additions. ICC Staff Ex. 17.0 at 3. As Mr. Ostrander states in his testimony, both he and AG/CUB witness Effron agree that the Company has overestimated plant additions in the past. ICC Staff Ex. 17.0 at 4-5. The Commission should reduce the Company's gross plant by \$9,450,000, which in turn results in an increase of the accumulated depreciation reserve by \$194,000, an increase in accumulated deferred taxes by \$33,000, and a reduction of depreciation expense of \$387,000. ICC Staff Ex. 17.01 at 1.

## **5. Accumulated Reserve for Depreciation and Amortization**

In keeping with the recommendation to use actual data as the basis for test year forecasts as much as possible, the People recommend that the Company's accumulated reserve for depreciation and amortization be adjusted to reflect an annualized rate of spending for one year based on the Company's actual experiences over the first nine months of 2008. AG In. Br. at 13; AG Reply Br. at 7-8. Such a calculation results in an adjustment reducing the forecasted cost of removal in 2008 by \$3,385,000 and the forecasted cost of removal in 2009 by \$3,108,000. AG/CUB Ex. 4.0. This adjustment in total increases average test year depreciation by \$4,940,000 and reduces the test year rate base accordingly. *Id.*

## **7. Other: Accumulated Deferred Income Taxes ("ADIT")**

In keeping with the People's recommendation that the Commission eliminate the "Retirement Benefits, Net" pension asset from the Company's rate base, the Commission should reduce Nicor's balance of accumulated deferred income taxes for the prepaid pension asset by \$89,581,000. AG In. Br. at 14; AG/CUB Ex. 1.0. Consistent with the adjustments discussed above to the accumulated reserve for depreciation and amortization, the Commission should increase the balance of accumulated deferred income taxes by \$1,081,000.

# **V. Operating Expenses**

## **C. Contested Issues**

### **1. Incentive Compensation Costs and Expenses**

The People recommend the Commission adopt the recommended adjustment of ICC Staff witness Diana Hathhorn and eliminate operating expenses for Incentive Compensation Units ("ICU") plan costs related to shareholder-oriented goals and for half the costs related to one performance goal unlikely to be achieved at its 100% target level for the reasons described in her testimony. AG In. Br. at 14; ICC Staff Ex. 15.0 at 10. Taken together, the adjustments described by Ms. Hathhorn reduce the Company's incentive compensation expense by \$378,000, and the Commission should adjust the Company's test year expenses accordingly. Attachment A, Schedule C-2.

### **2. Uncollectible Accounts Expense**

The Company includes \$68,311,000 of uncollectible account expense in its calculation of test year operating income under present rates, which in turn is based upon a projected test year uncollectible rate of 2.25% applied to forecasted test year revenues under present rates. AG In. Br. at 14-16; AG Reply Br. at 9-12. AG/CUB witness Effron testifies that the rate of 2.25% appears to assume an upward trend in the uncollectible accounts in 2008 and 2009, but that it is

not completely clear from the information provided how the exact rate of 2.25% for the test year was determined. AG/CUB Ex. 1.0 at 24; AG/CUB Ex. 4.0 at 11.. Instead, Mr. Effron testifies, the 2.25% uncollectible accounts rate is significantly in excess of the actual rate in any recent year. *Id.* As a more accurate estimation of the company's uncollectible expense, the People propose that the average net charge-offs as percentage of current revenues from 2006 to 2007, which is 1.80%, be used in calculating this expense. The People request that test year uncollectible accounts expense be reduced by \$13,325,000.

### **3. Rate Case Expense**

The People support the proposal of ICC Staff witness Burma Jones that the Commission extend the amortization of rate case expenses from three to four years for reasons described by Ms. Jones in her testimony. AG In. Br. at 16; ICC Staff Ex. 16.0 at 3-4. The Commission should adopt a four-year amortization period for rate cases expenses, with the result that the Company's rate case expenses should be reduced \$529,000. ICC Staff Ex. 16.0, Schedule 16.01.

### **4. Payroll / Headcount**

The People request that that Nicor's projection of payroll expense be adjusted to incorporate the difference between the number of authorized and actual employees. AG In. Br. at 16-17; AG Reply Br. at 12. The Company is forecasting test year payroll expense of \$97,545,000, an approximately 12% increase over the actual payroll expense in 2007, the most recent calendar year for which actual information is available. The Company's actual costs increases are projected based on Nicor's assumption that all authorized positions would be filled in the test year.

The People request that that Nicor's projection of payroll expense be adjusted to incorporate the difference between the number of authorized and actual employees. The effect of this adjustment, as calculated by Mr. Effron, reduces the forecasted test year operation and maintenance expense by \$2,602,000. AG/CUB Exhibit 4.1, Schedule C-2.1. This adjustment is exclusive of the People's proposed adjustments to Accounts 874 and 903, discussed in parts 5 and 6 of Section V *infra*. The Commission should also then make a related adjustment to payroll taxes, and reduce the Company's expenses there by \$199,000. *Id.*

### **5. Mains and Services Expenses**

Nicor has failed to present any reason why its expenses in this area should so dramatically increase – some 28% - over the actual expense incurred in calendar year 2007. AG In. Br. at 17-18; AG Reply Br. at 13; AG/CUB Ex. 1.0, 4.0. In that absence, the People therefore recommend that the Company's projection be adjusted based upon a simple projection of normal system growth and inflation. Mr. Effron compares Nicor's projection to normal system growth and inflation increases, and proposes an adjustment to the company's projection based on those calculations. *Id.* The People request that the test year mains & services expense be reduced by \$1,352,000. AG/CUB Ex. 4.1.

### **6. Customer Records and Collection Expenses**

Nicor has also failed to explain why the Customer Records and Collection Expenses – reported in Account 903 – is some 25% higher than the actual expense incurred in 2007. AG In. Br. at 18-19; AG Reply Br. at 14; Nicor Schedule C-4; Nicor Ex. 21.0 at 9. The Commission should adjust the Company's test year forecast by using the actual 2007 expense as a base and then increasing that amount by \$1,400,000 to allow for the additional costs of billing every

customer every month. If the remainder of costs is escalated by 5% per year, as AG/CUB witness Effron has proposed, the result is \$34,612,000. AG/CUB Exhibit 1.1, Schedule C-2. The Commission should reduce Nicor's test year expenses recorded in Account 903 by \$3,035,000 less than the test year expense forecasted by the Company.

#### **7. Charitable Contributions**

The People support the recommendation of ICC Staff witness Burma Jones that the Commission disallow charitable contributions which are not for the public welfare or charitable purposes, and which should be eliminated to protect ratepayers from double-recovering of those contributions. AG In. Br. at 19; ICC Staff Ex. 3.0 at 6-9 and ICC Staff Ex. 16.0 at 4-9. The Commission should reduce the Company's operating expenses by \$320,000. *Id.*

#### **9. Income Taxes**

The People recommend adjustments to the Company's state and federal income taxes based upon the People's proposed adjustments to Nicor's operating income and rate base. AG In. Br. at 19; AG/CUB Ex. 1.0. The People request that the test year state income tax expense be increased by \$2,424,000 and the test year federal income tax expense be increased by \$10,772,000. Attachment A, Schedule A.

### **VI. Rate of Return**

#### **B. Contested**

##### **3. Cost of Common Equity**

###### **a. ROE Calculation**

The People agree with the analysis and conclusions of CUB witness Chris Thomas, and support his recommendation that the Commission grant Nicor a 9.455% rate of return on common equity. AG In. Br. at 20-21; AG Reply Br. at 14-15. *See* CUB Ex. 1.0 at 2-3.

##### **4. Overall Cost of Capital (Derivative)**

The People agree with the analysis and conclusions of CUB witness Thomas, and support his recommendation that the Commission should set the overall cost of capital Nicor could recover at 7.24%. *Id.*

### **VIII. Rate Design**

#### **A. Overview**

#### **C. Contested Issues**

##### **1. Rate 1 Design**

###### **(a) Overview**

Nicor claims that its new residential rate design, based on a 2009 test year, is just and reasonable simply because it resembles rate designs recently approved in The Peoples Gas Light & Coke Company and North Shore Gas ("Peoples Gas") and AmerenCILCO, AmerenCIPS, and AmerenIP (collectively "Ameren") cases. But Nicor's rate design imposes unfair burdens on

low-use customers so that high-use customers can save significant sums on their gas delivery charges.

Nicor is proposing an overall 31.36% increase in rates to the residential class. AG/CUB Ex. 3.0 at 2. However, instead of increasing each rate element (customer charge and declining block rate) by the same percentage, Nicor is proposing a fairly radical restructuring of the rate that includes increasing the customer charge by 60%. Nicor In. Br. at 68-70. As an alternative, Nicor proposes a straight fixed variable rate that allows Nicor to increase the monthly customer charge by more than double. AG/CUB Ex. 3.0 at 3. Staff's residential rate design proposal increases the monthly customer charge to \$10.65 and charges a flat rate of \$0.099 for all therms. Staff In. Br. at 85.

The People oppose all of these rate design proposals, as they impose significantly higher increases to low-use customers and relatively smaller increases to high-use customers, thereby preventing cost-causers from accurately paying for the costs they are responsible for causing on Nicor's system.<sup>2</sup>

### **(b) Nicor's Proposal**

Nicor's sole justification for its residential rate design proposal are holdings in the recent ICC Orders in the Peoples Gas cases, ICC Dockets No. 07-0241/07-0242, and Ameren cases, ICC Dockets No. 07-0585 through 07-0590. Nicor In. Br. at 70-72. While Nicor's Initial Brief cites passages from the Commission's Orders in the People's Gas and Ameren cases to justify its need to recover more fixed costs through the monthly customer charge, Nicor does not offer a scintilla of substantive evidence to support its request. *Id.* at 68-72.

Nicor claims that it is not recovering its fixed costs through its existing rate design and needs to shift recovery of costs to the customer charge so that its revenue stream is less dependent on gas consumption. The evidence, however, shows that Nicor over-recovered its fixed costs by about \$638,000 over what it projected in its last rate case. AG In. Br. at 49. With the assumption underlying its proposal disproved by an objective review of the evidence, Nicor's rate design proposal is unsupportable.

Nicor's reliance on the facts of the recent Peoples Gas and Ameren orders should bear no weight, since Commission orders are not *res judicata*.<sup>3</sup> See e.g., *United Cities Gas Co. v. Illinois Commerce Comm'n*, 163 Ill. 2d 1, 22-23 (1994). Even Staff agrees that the People's Gas and Ameren decisions are not persuasive, since "those decisions are not binding on the current docket . . . [and] [a]dopting the Company's rate design on this basis will clearly benefit Nicor Gas . . . at ratepayer expense." Staff In. Br. at 85, 86.

Nicor is proposing an overall 31.36% increase in residential rates. AG Reply Br. at 20. However, instead of increasing each rate element (customer charge and block rates) by the same percentage, Nicor is proposing a fairly radical restructuring of the rate: increasing the customer charge 60% (to \$13.55 per month) and reducing the declining block rates. *Id.* The first block (first 20 therms per month) will receive more than a 13% reduction to \$.1271 per therm. Nicor In. Br. at 70. The second and third blocks will be consolidated (usage in excess of 20 therms per

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<sup>2</sup> Bill impacts regarding the unfairness of the results can be found at AG/CUB Ex. 5.01 and Staff Ex. 7.05.

<sup>3</sup> Additionally, the proceedings Nicor relies on to support its position are currently on appeal and those decisions may be overturned and remanded to the Commission for reconsideration.

month) at \$0.0519 per therm, which is a reduction of more than 10% in the monthly price for delivery between 20 and 50 therms.

Nicor is proposing to recover more from low-use customers and relatively little from high-use customers:

- 10% of residential customers will receive a 25% annual bill increase;
- 51.2% will receive annual bill increases of up to 30%;
- 39% of residential customers would face larger than average (31%) increases. Notably, of these customers,
  - 3% will receive an annual increase between 40% and 60%; and
  - 1% will receive an annual increase of 90% or more.

AG Reply Br. at 20-21. The smallest customers on the system (lowest-consuming 1% of non-heating customers) will see a 60% increase in base rate charges. *Id.* at 21. In contrast, high-use non-heating customers will only pay a 14% increase in base rate charges. *Id.* Low-use heating customers will see a 40.50% increase in base rates, while highest-use heating customers will only see a 3.1% increase. *Id.*

Nicor's rate design imposes an excessive monthly customer charge, minimizing the impact that a customer's conservation efforts can have on his or her bill, since a significant portion of the bill will be based on the customer charge that is not associated with usage. AG Reply Br. at 22. The ICC should reject this proposal, since Nicor is over-recovering its fixed costs and such a proposal will lead to disparate bill impacts.

#### **(c) Staff Proposal**

Staff proposes a residential rate design that increases the monthly customer charge to \$10.65 and charges a flat rate of \$0.099 for all therms used. Staff In. Br. at 85. This rate design also results in extremely disparate bill impacts, since it causes bill increases as large as 75%; customers who use 200-250 therms a month would face a 45.9% increase, while customers who use between 250-500 and 500-1,000 therms a month would have to pay increases of 50.86% and 65.07%, respectively. This violates the principles of gradualism. AG Reply Br. at 23. For these reasons, the People urge the Commission to reject Staff's rate design proposal.

#### **(d) AG/CUB Proposal**

AG/CUB witness Rubin proposes an equal across-the-board rate modification, whereby any rate increase or decrease is applied to each element of Nicor's residential rates (customer charge and 3 distribution blocks) by the same percentage increase or decrease as the residential class's overall rate increase. AG Reply Br. at 24. Across-the-board increases preclude disparate bill impacts for different types of customers.

Nicor cites three reasons for its opposition to an across-the-board rate modification proposed by AG/CUB witness Rubin, but does not elaborate on those reasons. First, Nicor claims that the People fail "to recognize the importance of the recovery of fixed costs through fixed monthly customer charges." Nicor In. Br. at 74. Second, Nicor claims that the People's proposed rate design exacerbates weather sensitivity by increasing residential costs in winter

months when usage is at its highest. *Id.* Third, Nicor claims that the People proposal fail to recognize that Nicor's cost of serving residential customers is mostly fixed and not driven by volume. *Id.*

Nicor's first and third arguments are not accurate. The People's rate design proposal recognizes (i) the fact that Nicor's over-recovered its total fixed costs and (ii) the fact that Nicor currently recovers most of its additional fixed costs through the first consumption block under a rate structure that was just and reasonable in Nicor's last rate case. AG Reply Br. at 24; AG/CUB Ex. 5.02; AG/CUB Ex. 3.0 at 10, 14, 15.

Nicor's second argument, stating that the People's proposed rate design exacerbates weather sensitivity by increasing residential costs in winter months when usage is at its highest, is also not accurate, since Nicor and Staff's proposals actually exacerbate weather sensitivity. Nicor's proposal ensures that customers will pay more in the winter regardless of usage, due to the significant increase in the monthly customer charge. AG Reply Br. at 25. Staff removes the three declining blocks for a single block charge, resulting in higher per therm charges, also ensuring higher rates. *Id.*

By implementing across-the-board rate modifications, the ICC will take into account important public policy considerations, such as customer impacts, the overall fairness of the rates, rate continuity, gradualism, and other factors relevant to producing just and reasonable rates and avoid disparate rate increases. Staff has advocated for across-the-board rate modifications in recent Ameren and Commonwealth Edison Company ("ComEd") dockets. ICC Docket 07-0585-07-0590, ICC Staff Reply Brief on Exceptions at 22, August 27, 2008; ICC Docket 07-0566 (ComEd), Order at 186, September 10, 2008.

### **3. Rate 1 design – Alternative Straight Fixed Variable**

Nicor's alternative residential rate design proposal implements a straight fixed variable ("SFV") rate and it should also be rejected. AG In. Br. at 24-25; AG Reply Br. at 26-28. Staff also correctly challenges the SFV rate, which allows Nicor to more than double the monthly customer charge to \$18.66 per month and charge \$0.014 per therm for gas delivery. AG Ex. 3.0 at 3. SFV rates allow the company to recover all fixed costs through the customer charge. AG In. Br. at 24-25.

The Company's proposal results in fully one in every four customers paying more than a 40% annual increase, with the lowest-use customers seeing their annual bills double. *Id.* at 24. Under SFV rates, 2% of the customers (largest residential users) will receive a decrease even in the face of a 31% rate increase overall; 20% of customers will receive increases of up to 20%. *Id.* Thousands of lower-use customers will pay an extra \$70 per year or more above the 31% average increase, while thousands of higher-use customers will save hundreds of dollars. About a dozen customers will see their bills decline by more than \$1,000 annually, as compared to the average 31% increase. *Id.*

SFV rates result in such severe and disparate rate impacts that directly conflicts with several well-established ratemaking principles, such as principles of gradualism, rate continuity, equity, and non-discrimination. *Id.* at 24-25. Staff also correctly opposes Nicor's SFV rates. Staff In. Br. at 79-80; Staff Ex. 7.0 at 34.



## **XII. New Riders**

### **A. Overview**

The use of riders as mechanisms to adjust customer rates on a monthly basis is permissible only when certain factual conditions are present or when specifically authorized by statute. Traditional regulation provides a clear framework for the Commission's analysis of the Company's rider proposals. For utility ratemaking purposes, rider proposals are closely scrutinized because of the danger of single-issue ratemaking they pose. *City of Chicago v. Illinois Commerce Comm'n*, 281 Ill.App.3d 617 (1<sup>st</sup> Dist. 1996).

Riders generally undermine long-established principles of ratemaking. The establishment of a utility's revenue requirement is based on an examination of the utility's aggregate costs and demand. *Citizens Utility Board v. Illinois Commerce Comm'n*, 166 Ill.2d 111, 136-136; *Business and Professional People for the Public Interest v. Illinois Commerce Comm'n*, 146 Ill.2d 175, 244. Based on the case law and statutory authorizations issued to date, riders are permissible (i.e., are not deemed illegal single-issue ratemaking) when the expenses at issue are (1) unexpected, volatile or fluctuating, pursuant to *A. Finkl & Sons Company v. Illinois Commerce Comm'n*, 250 Ill.App.3d 317, 329 (First Dist. 1993), citing the 1958 case that affirmed the use of fuel adjustment clauses, *City of Chicago v. Illinois Commerce Comm'n*, 13 Ill.2d 607, 150 N.E.2d 776 (1958), or (2) imposed on the utility by law, including federal and state law (such as environmental clean-up expenses) and municipal ordinance for a unique purpose (such as franchise fees), pursuant to the *Citizens Utility Board and City of Chicago v. Illinois Commerce Comm'n*, 281 Ill.App.3d 617 (1st Dist. 1996) (*City of Chicago II*) cases, or (3) specifically authorized by statute to be recovered in a rider. *See* AG Init. Br. at 31-33.

In presenting their rider proposals, Nicor ignored the Public Utilities Act's prohibition against single-issue ratemaking. Riders VBA, QIP, UEA, CUA and the Conservation Stabilization Adjustment mechanism in Rider EEP are premised on a violation of this important ratemaking principle, and must therefore be rejected. When the criteria Illinois courts have outlined for the permissible use of riders for certain expense items are applied to Nicor's proposed UEA, CUA, VBA, QIP and Conservation Stabilization Adjustment riders, the evidence reveals that none qualifies for the unorthodox ratemaking treatment riders trigger. These new rider proposals also violate the Act's prohibition against retroactive ratemaking. Moreover, the proposed recovery of these expenses and per customer revenues violates the Commission's test year rules, as well as the Act's requirement that rates be least cost.

For all of the reasons discussed in the People's Initial and Reply briefs, the Commission should reject each of these new rider proposals.

### **B. Rider 26 – Uncollectible Expense Adjustment**

Both the record evidence and Illinois case law support rejection of Nicor's proposed rider recovery of uncollectible expenses. AG/CUB Ex. 2.0 at 8-13. AG/CUB witness Rubin testified that implementing such a rider would remove much of Nicor's incentive to control these expenses and could provide Nicor with an incentive to allow its customer service to deteriorate.

Moreover, Mr. Rubin, as well as Staff witness Peter Lazare concluded that the proposed Rider UEA does not meet the legal criteria that Illinois courts and the Public Utilities Act (“the Act”) outline for rider treatment of expenses. AG/CUB Ex. 2.0 at 14-15; ICC Ex. 7.0 at 10-11. The proposed Rider UEA constitutes an inappropriate and unfair shift of financial risk to Nicor’s ratepayers.

Rider UEA also should be rejected because it is illegal. Rider UEA violates the Act’s prohibition against single-issue and retroactive ratemaking. In addition, Rider’s UEA would permit an adjustment of rates beyond the level approved in the revenue requirement established by the Commission in the final order of this docket, in violation of the Commission’s test year rules. Finally, Rider UEA is not needed for the Company to maintain its financial integrity, and would violate the Act’s requirement that rates be least cost.

Further discussion of these positions can be found in the Peoples Initial Brief at pages 36-43 and the People’s Reply Brief at pages 38-40.

### **C. Rider 27 – Company Use Adjustment**

Nicor’s proposed automatic rate adjustment for company use of gas should be rejected. AG/CUB witness Rubin testified that the ICC has already ordered Nicor to treat the largest component of this rider (gas losses) as a base rate item. AG/CUB Ex. 2.0 at 16. Mr. Rubin concluded that the remaining costs that would be included in the proposed rider – gas that Nicor uses for compressor stations and office buildings – do not fluctuate significantly. *Id.* at 14-15. Further, Nicor should be given an incentive to control these costs, just as any other customer must react to changes in natural gas prices. *Id.* at 17. Staff concurred on these points. ICC Ex. 25.0 at 2-3. Both Mr. Rubin and Staff witness David Brightwell concluded that the Company has some control over the amount of gas used, and that incentives to control gas use costs would decrease if the proposed rider is adopted. *See* Staff Init. Brief at 148-151; AG/CUB Ex. 2.0 at 17.

It is neither necessary nor fair to completely insulate Nicor from increases in the cost of natural gas used by the Company. In addition, the Commission’s accounting rules would permit Nicor to request an amortization if the costs in account 823 (gas losses from storage) – the largest of the accounts for which Nicor seeks rider recovery under proposed Rider CUA – were to change significantly. AG/CUB Ex. 2.0 at 15-16. Moreover, as discussed in the People’s Initial and Reply briefs, proposed Rider CUA is illegal because it 1) violates the Act’s prohibition against single-issue and retroactive ratemaking, as well as the Commission’s test year rules; 2) creates rates that are not least cost, in violation of the Act; and 3) does not meet the criteria outlined by the Act and Illinois courts for permissible rider recovery.

These and other arguments that support rejection of Rider CUA can be found in the People’s Initial and Reply briefs. *See* AG Init. Br. At 43-53; AG Reply Br. at 40-42.

### **D. Rider 28 – Volume Balancing Adjustment**

The evidence shows that Nicor’s proposal to decouple revenues from sales, known as proposed Rider VBA, should be rejected. As a general matter, Mr. Rubin testified that Nicor’s proposed Rider VBA inappropriately assumes that every new customer – that is, each customer

added after this rate case is concluded – should use the same amount of natural gas as the average, existing customer. AG/CUB Ex. 2.0 at 19. Second, the underlying, faulty premise of Rider VBA is that it is entitled to recover a certain amount of revenue from each customer (on average) in a customer class. This notion contradicts both the ratemaking process and case law that provide that a utility is entitled to rates that provide the opportunity to a reasonable return on the value of its property, not a guarantee.

Further, the premise of Rider VBA – that declines in usage per customer translate into an inability to recover fixed costs – is a faulty one. Determining whether a company is recovering its fixed costs cannot be done by simply examining per customer revenues in isolation, as Rider VBA requires. In order to determine whether a utility is recovering its fixed costs, it is essential to examine overall revenues, expenses and capital costs. Rider VBA's formula for adjusting rates ignores most notably ignores revenue gains achieved through the addition of new customers. Perhaps most damaging to Nicor's insistence that Rider VBA is necessary for it to recover its fixed costs was Mr. Rubin's examination of Nicor's billing data and responses to AG discovery questions, which showed unequivocally that no under-recovery of fixed costs is occurring. AG/CUB Ex. 3.0 at 11-18; AG/CUB Ex. 5.0 at 4-7.

In addition, Rider VBA is illegal. The proposal to recover a benchmark level of revenues per customer in the rates 1 and 4 customer classes does not meet the criteria established for permissible rider recovery. AG Init. Br. at 63-65. Moreover, recovery of lost revenues due to energy efficiency and conservation has been specifically rejected in Illinois case law. *A. Finkl & Sons Company v. Illinois Commerce Comm'n*, 250 Ill.App.3d 317, 329 (First Dist. 1993). In addition, Rider VBA violates the prohibitions against single-issue and retroactive ratemaking contained in the Act. *See Business and Professional People for the Public Interest v. Illinois Commerce Comm'n*, 146 Ill.2d 175, 195, 585 N.E.2d 1032 (1991). Rider VBA also violates the Commission's test year rules, as well as the requirement in the Act that rates be least cost. 83 Ill.Admin. Code Part 285; 220 ILCS 5/1-102, 1-102(a), 8-401. Finally, Rider VBA is discriminatory in its application, as it applies to only the residential and commercial rate classes.

These arguments are presented in detail in the People's Initial and Reply Briefs. *See* AG Init. Br. at 53-70; AG Reply Br. at 42-53.

#### **E. Rider 29 – Energy Efficiency Plan**

The Company has proposed a rider to recover costs associated with investments in energy efficiency, known as Rider EEP. Proposed Rider EEP includes a Conservation Stabilization Adjustment that operates as an alternative to Rider VBA, should it be rejected by the Commission, which would recover revenues allegedly lost as a result of energy efficiency programs.

The CSA should be rejected on both evidentiary and legal grounds. Nicor has not explained how it would determine changes in revenues that result from energy efficiency programs and has not even estimated the magnitude of any potential rate adjustments. For example, Nicor could not describe how it would determine whether a therm that was not used by a customer was the result of a particular Nicor-sponsored energy efficiency program, the result of a customer-financed appliance purchase, or caused by something completely unrelated (such as a customer taking a vacation during a different month than he did last year). The

Commission should not presume assigning lost revenues to specific energy efficiency programs is an easy or appropriate task.

Approving a mechanism to increase customer rates for estimating specific energy efficiency program revenue losses, assuming that can be accomplished in a verifiable way, is a leap of faith the Commission should avoid. It is worth noting, too, that Illinois' electric delivery service providers are required to offer energy efficiency programs but are not compensated in any way for revenue losses attributable to such programs. See 220 ILCS 5/8-103(e). The Company has provided no reason why it should be treated differently.

Moreover, incorporating a lost revenues adjustment with Rider EEP is unreasonable for public policy reasons. Nicor has made no analysis of what effect on customer participation in Company-sponsored energy efficiency programs such a mechanism would have. It is reasonable to assume that ratepayers would be discouraged from participating in a program that ultimately will assess additional charges for natural gas that is not used. For this reason, too, the adjustment should be rejected.

Finally, the proposed CSA is illegal. A utility should not be given the ability to automatically change rates because of increases or decreases in consumption, without considering other factors that might change between rate cases. To do so is an extreme form of single-issue ratemaking which destroys the relationship between customers' rates and the cost of providing service. See *Citizens Utility Board*, 166 Ill.2d at 136-137; *Business and Professional People for the Public Interest v. Illinois Commerce Comm'n*, 146 Ill. 2d. 175, 244, 585 N.E.2d 1032 (1991) ("*BPI II*").

In addition, as noted above, the Illinois Appellate Court specifically addressed and rejected the notion that lost revenues attributable to conservation should be recovered in customer rates, and held that "Requiring ratepayers to bear the expense of services they avoid due to conservation or DSM programs is not only incredible, but runs afoul of basic ratemaking principles." See *Finkl*, 250 Ill.App.3d at 329.

Moreover, the proposal to adjust rates retroactively after specific revenue declines attributable to the programs are identified after rates are set in this case constitutes retroactive ratemaking. In addition, assessing surcharges for lost revenues violates the least-cost provisions of the Act. 220 ILCS 5/1-102, 1-102(a), 8-401.

For these reasons, too, the Conservation Stabilization Adjustment should be rejected. Additional support for these arguments is provided in the People's Initial and Reply Briefs. See AG Init. Br. at 76-79; AG Reply Br. at 56-58.

#### **F. Rider 30 – Qualifying Infrastructure Plant**

Nicor's proposed automatic rate adjustment to recover incremental investments in infrastructure replacement should be rejected. AG/CUB witness Rubin testifies that the Company's existing pipeline optimization program has been successful in optimizing the repair and replacement decisions for cast iron mains and copper services. AG/CUB Ex. 2.0 at 31-38. Nicor has achieved dramatic improvements in minimizing leak repair in a cost-effective manner,

and there is no reason to change or accelerate that program. *Id.* Moreover, Nicor witnesses admitted that the proposed Rider QIP is not needed for safety reasons. See Nicor's responses to AG 3.33 and MEM 4.01, attached to Mr. Rubin's Direct Testimony as AG/CUB Ex. 2.15. Mr. Rubin said he could not conclude from these data that Nicor needs to take some extraordinary action in order to keep up with industry trends. On the contrary, it appears that Nicor is in a very similar position to its peers in the industry. *Id.*

Nicor's proposed Rider QIP would extract an extraordinary price – an estimated additional \$20 million annually – for ordinary service. Mr. Rubin also showed that the proposal fails any cost/benefit analysis. He demonstrated that the annual revenue requirement for the accelerated program in the first year would be approximately 20 times greater than the annual savings that would be expected. Even after the new mile of main were depreciated for 20 years, the annual revenue requirement still would be at least 7 times higher than the expected savings in operating and maintenance expenses. Indeed just the annual depreciation expense of more than \$14,000 – that is, no return on the investment at all – exceeds the expected annual operating savings by more than 400%. AG/CUB Ex. 2.0 at 36-37.

Finally, the proposed Rider QIP is illegal. The Company's desire to accelerate the replacement of cast iron main and copper services under Rider QIP does not meet the criteria for permissible rider treatment. Rider QIP also violates the Act's prohibition against single-issue and retroactive ratemaking, as well as the Commission's test year rules. Rider QIP also violates Section 9-211 of the Act, which requires that only plant that is deemed used and useful and prudently incurred be included in customer rates. 220 ILCS 5/9-211. In addition, Rider QIP's assessment of monthly surcharges for an unneeded acceleration of main and service replacement violates the requirement in the Act that rates be least cost. 220 ILCS 5/1-102, 1-102(a), 8-401.

For all of these reasons, the Commission should reject proposed Rider QIP. These arguments are presented in detail in the People's Initial and Reply Briefs. *See* AG Init. Br. at 79-94; AG Reply Brief at 58-63.

### **XIII. Terms and Conditions**

#### **C. Contested Issues**

##### **1. Non-Sufficient Funds ("NSF")**

The Company seeks to increase the charge for returned checks for non-sufficient funds ("NSF") from \$16.00 to \$25.00 and claims that the new charge "is consistent with the prevailing level charged by other gas utilities in Illinois." Nicor Ex. 14.0 (Corrected) at 52; Nicor Ex. 29.0 (Corrected) at 29. Nicor witness Mudra acknowledges that it does not cost Nicor \$25 to process a return payment. Nicor Ex. 29.0 (Corrected) at 28-29. Rather, Nicor's cost to process a returned payment is \$14.27. AG/CUB Exhibit 2.0 at 41. The Company tries to justify the \$25.00 charge using one of the oldest excuses known from childhood: everyone else is doing it. Nicor In. Br. at 127-128. Since People's Gas and MidAmerican Energy receive a \$25.00 NSF charge, Nicor is requesting a windfall in excess of its costs.

Clearly, Nicor's proposed increase of the NSF charge from \$16.00 to \$25.00 fails the standard set forth in Section 9-101 of the Public Utilities Act, requiring rates to be just and reasonable, since Nicor offers no reasonable justification for its request. 220 ILCS 5/9-101. The

charge for a returned payment should be set to recover the costs incurred by the utility. When a customer submits an NSF check, the customer is charged a fee by its bank and by Nicor, which should provide more than enough incentive for the customer to avoid bad payments. AG/CUB Ex. 2.0 at 39. There is no evidence that any further penalty will affect customer behavior.

Nicor did not present sufficient evidence to justify such charges in this docket. As such, \$25.00 is not a just and reasonable rate for Nicor's non-sufficient funds charge. Furthermore, such a charge was not prudently incurred, as it was not actually incurred by the Company. If Nicor does not spend \$25.00 to process a bad check, the Commission has no basis to grant the \$25.00 NSF charge.

Assuming that the Commission grants Nicor's rate design, which the People maintain it should not, then a customer who uses 50 therms in a month will pay more for the NSF charge (\$25.00) than for their bill (\$17.64).<sup>4</sup> Under Staff's proposed rate design, a customer who uses 50 therms per month will pay \$15.60<sup>5</sup> for their total bill and \$25.00 for a NSF charge. Nicor should not be allowed to impose such disproportionate penalties.

## **XVII. Conclusion**

For the foregoing reasons, and for all of the reasons provided in the People's Initial and Reply Briefs, the People request that the Commission enter a final order in this case consistent with the recommendations provided above and in the People's Initial and Reply briefs.

Respectfully submitted,

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<sup>4</sup> This consists of a customer charge of \$13.55, \$.1271 for the first 20 therms and \$.0519 for the remaining 30 therms.

<sup>5</sup> This consists of a customer charge of \$10.65 and \$.099 for each of the 50 therms.